IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4404 OF 2004

Mrs. Shubhada Anant Karve .. Petitioner

Versus

The State of Maharashtra & Ors. .. Respondents

Mr.N.V.Bandiwadekar for the petitioner

Mrs.J.S.Pawar, Addl. G.P. for the respondents

CORAM: A.P.SHAH &
S.U.KAMDAR, JJ

DATED: 23RD AUGUST, 2004

ORAL JUDGMENT (PER S.U.KAMDAR, JJ.):

1. In the present petition, the petitioner is seeking a condonation of a break in service for a period of 4 years from 9th June 1986 to 10th June 1990. Few facts are as under:

2. The petitioner is a qualified teacher and possesses the qualification of B.A., B.Ed. She was appointed as an Assistant Teacher at Paranjpe Motiwale High School, Chiplun, Dist: Raigad. Her

appointment was duly approved by Education Officer (Secondary), Ratnagiri Zilla Parishad, Ratnagiri.

3. On 8th May 1984, the petitioner got married. On her marriage, the petitioner went on leave and ultimately on 9th June 1986 the petitioner tendered her resignation from the school at Chiplun, Dist: Raigad. On 11th June 1990, the petitioner got herself appointed as Head Mistress in 5th respondent school which is situated at Ulhasnagar, Dist: Thane and thereafter the petitioner worked continuously till she attained the age of superannuation on 31st December 2003. Thus, there has been a break in service for a period of 4 years from 9th June 1986 to 10th June 1990.

4. On 26th December 2003 the petitioner made a request for condonation of break in service and a no objection certificate was issued by the respondent management in favour of the petitioner. She also gave an undertaking that during the period of break in service she was not working anywhere else. The petitioner applied for condonation of

such break in service for the purpose of processing her pension papers and to make her service period eligible for the pensionary benefits. On 24th March 2004, the respondent no.1 has rejected the said application inter alia holding that the petitioner is not entitled to the benefits of condonation as her services are only for a period of 13 years 6 months 20 days in the last school and there is no provision for relaxation of the rules for making her service eligible for pensionary benefits. The petitioner have relied upon 2 resolutions which are issued by the State Government in so far as the condonation of service break for the pensionary benefits is concerned being G.R. No. PEN/1076/81126(1491)/XII dated 12th November 1976 and G.R.No.PEN/1088/120973/(582)SE-6, Mantralaya Extension Building, Mumbai 32 dated 10th May 1989. Respondents have filed an affidavit in reply and contended that the petitioner is not entitled to the said benefit and the reliance is placed once again on the very same Government Resolutions. The G.R. dated 10th May, 1989 inter alia provides for

condonation in break in service and particularly clause 4 thereof reads as under:

> "4. In this regard, it is clarified that the provisions made in the Government Resolution dated 12.11.1976 to condone the Break in service by relaxing the conditions set out in paragraph 7 of the Government Resolution dated 4.11.1968 are within the powers delegated to the Education Department. The said provisions should not be linked to the powers of the Divisional Deputy Director of Education. While examining the matters, the Deputy Director of Education should examine the same only as per the provisions of the Government Resolutions dated 4.11.1968 and 30.8.1972. He should not directly reject the same by citing the provisions of the Government Resolution dated 12.11.1976 and he should send the same to the Government for further action. By order and in the name of the Governor of Maharashtra."

5. In the light of the aforesaid provisions of the said G.R. we are of the opinion that the petitioner is entitled to condonation in break in service particularly when there is a power of relaxation stipulated therein. Accordingly, we direct the Government to condone the break in service of the petitioner and process the petitioner's papers for pensionary benefits and grant the petitioner the benefits of pension in accordance with the rules. We direct the respondents to process the petitioners papers for pension within a period of 4 months from the date of this order. We dispose of the petition accordingly with aforesaid direction. However, there shall be no order as to costs.

Parties to act on a copy of this order duly authenticated by the Court Stenographer.